Supreme Court, U.S.
FILED

03 . 923 DEC 18 2003

No. 03-

In the Supreme Court of the United States

ILLINOIS, PETITIONER,

v.

ROY I. CABALLES, RESPONDENT.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR A WRIT OF CERTIORARI

LISA MADIGAN
Attorney General of Illinois
GARY FEINERMAN*
Solicitor General
LINDA D. WOLOSHIN
MARY FLEMING
Assistant Attorneys General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3698

*Counsel of Record

Counsel for Petitioner

QUESTION PRESENTED

Whether the Fourth Amendment requires reasonable, articulable suspicion to justify using a drug-detection dog to sniff a vehicle during a legitimate traffic stop.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	1
STATEMENT	2
REASONS FOR GRANTING THE PETITION	5
A. This Court Should Resolve The Deep Conflict Over Whether The Fourth Amendment Requires Reasonable, Articulable Suspicion To Justify Use Of A Drug-Detection Dog During A Legitimate Traffic Stop	6
B. The Illinois Supreme Court Erred In Holding That The Fourth Amendment Requires Officers To Have Reasonable, Articulable Suspicion Before Using A Drug-Detection Dog During A Legitimate Traffic Stop	8
C. The Question Presented Is Important And Recurring	9
CONCLUSION	10

TABLE OF AUTHORITIES

Cases:	Page
Board of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls, 536 U.S. 822 (2002)	9
Bradshaw v State, 759 N.E.2d 271 (Ind. App. 2001)	9
City of Indianapolis v. Edmond, 531 U.S. 32 (2000)	4, 6, 8, 9
Florida v. Bostick, 501 U.S. 429 (1991)	9
Kyllo v. United States, 533 U.S. 27 (2001)	9
People v. Cox, 202 Ill.2d 462, 782 N.E.2d 275 (2002), cert. denied, 123 S. Ct. 2574 (2003)	3, 4
People v. Luna, 322 Ill.App.3d 855, 859, 752 N.E.2d 477 (2001)	4
State v. Bergmann, 633 N.W.2d 328 (Iowa 2001)	7
State v. Box, 205 Ariz. 492, 73 P.3d 623 (App. 2003)	7
State v. Brown, 691 So.2d 637 (Fla. App. 1997)	9
State v. Carlson, 657 N.E.2d 591 (Ohio App. 1995)	9
State v. England, 19 S.W.3d 762 (Tenn. 2000)	7
State v. Fields, 662 N.W.2d 242 (N.D. 2003)	8
State v. Gama, 112 Nev. 833, 920 P.2d 1010 (1996)	7

State v. Wiegand, 645 N.W.2d 125 (Minn. 2002) 7

Terry v. Ohio, 392 U.S. 1 (1968) 3, 5

United States v. Arreola-Delgado, 137 F.Supp.2d 1240 (D. Kan. 2001) 9

United States v. Dortch, 199 F.3d 193 (5th Cir. 1999) 7

United States v. Holloman, 113 F.3d 192 (11th Cir. 1997) 7

United States v. Hunnicutt, 135 F.3d 1345 (10th Cir. 1998) 7

United States v. Ibarra, 345 F.3d 711 (9th Cir. 2003) 7

United States v. Jeffus, 22 F.3d 554 (4th Cir. 1994) 7

United States v. Moore, 329 F.3d 399 (5th Cir. 2003) 7

United States v. Place, 462 U.S. 696 (1983) 4, 6, 8

United States v. Quinn, 815 F.2d 153 (1st Cir. 1987) 7

United States v. Taylor, 955 F. Supp. 763 (E.D. Mich. 1997) 9

United States v. $404,905.00 in U.S. Currency, 182 F.3d 643 (8th Cir. 1999), cert. denied, 528 U.S. 1161 (2000) 7

Wilkes v. State, 364 Md. 554, 774 A.2d 420 (2000) 6

Constitutional Provision:

U.S. Const., amend. IV ..... *passim*

Statutes:

28 U.S.C. § 1257(a) 1

720 ILCS 550/5.1(a) (West 1998) 2

PETITION FOR A WRIT OF CERTIORARI

The State of Illinois respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Illinois in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Illinois (App. 1a-10a) will be reported at ___ Ill.2d ___, ___ N.E.2d ___ (2003), and is reported at 2003 WL 22725527. The judgment of the Appellate Court of Illinois, Third District, is reported at 321 Ill.App.3d 1063, 797 N.E.2d 250 (2001) (Table), and its unpublished opinion is reproduced at App. 11a-19a. The oral ruling of the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, Illinois (App. 20a-27a), is unreported.

JURISDICTION

The Supreme Court of Illinois entered judgment on November 20, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

Following a bench trial, the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, convicted respondent of one count of cannabis trafficking under 720 ILCS 550/5.1(a) (West 1998). The Illinois Appellate Court affirmed. The Illinois Supreme Court reversed, holding that the use of a drug-detection dog during a legitimate traffic stop of respondent's vehicle violated the Fourth Amendment because there were no specific, articulable facts suggesting that the vehicle contained illegal drugs.

1. On November 12, 1998, Trooper Daniel Gillette stopped respondent for speeding. Gillette radioed the police dispatcher that he was making the stop. Trooper Craig Graham, of the Illinois State Police Drug Interdiction Team, heard the radio transmission and told the dispatcher that he was going to meet Gillette and conduct a canine sniff. App. 1a.

Trooper Gillette approached respondent's car, informed respondent he was speeding, and asked for respondent's driver's license, vehicle registration and proof of insurance. Respondent complied. Gillette then instructed respondent to reposition his car on the shoulder of the road, so that both vehicles would be out of traffic, and to come back to the squad car because it was raining. Respondent again complied. *Id.* 2a.

Once both men were seated in the squad car, Trooper Gillette told respondent he was going to write a warning ticket for speeding. Gillette then called the police dispatcher to determine whether respondent's license was valid and to check for outstanding warrants. The dispatcher reported back that respondent had surrendered his Illinois license to Nevada, and two minutes later confirmed that respondent's Nevada license was valid. After receiving this confirmation, Gillette asked the dispatcher for respondent's criminal history. *Ibid.*

Trooper Gillette then asked respondent for consent to search his vehicle, and respondent refused. Gillette next asked respondent if he had ever been arrested, and respondent said no. The dispatcher subsequently reported that respondent had two prior arrests for distribution of marijuana. *Ibid.*

While Trooper Gillette was writing the warning ticket, Trooper Graham arrived with his drug-detection dog and began walking around respondent's car. Less than one minute thereafter, while Gillette was still writing the ticket, the dog alerted at the trunk. After being advised of the alert, Gillette searched the trunk and found marijuana. Respondent was arrested and charged with one count of cannabis trafficking. *Id.* 2a-3a, 13a.

2. Respondent filed a motion to suppress the marijuana found in his vehicle and to quash his arrest. The trial court denied the motion (App. 20a-27a) and, following a bench trial, found respondent guilty. Respondent was sentenced to twelve years in prison and ordered to pay a street value fine of $256,136. The Illinois Appellate Court affirmed. App. 11a-19a.

3. In a four-to-three decision, the Illinois Supreme Court reversed. App. 1a-10a. To determine the overall reasonableness of the stop, the majority applied the two-part test of *Terry v. Ohio*, 392 U.S. 1 (1968), "(1) 'whether the officer's action was justified at its inception' and (2) 'whether it was reasonably related in scope to the circumstances which justified the interference in the first place.'" *Id.* 4a. The majority found that the traffic stop was properly initiated, but concluded that the troopers "impermissibly broadened the scope of the traffic stop" by using the drug-detection dog. *Ibid.*

In so concluding, the majority relied heavily upon *People v. Cox*, 202 Ill.2d 462, 782 N.E.2d 275 (2002), cert. denied, 123 S. Ct. 2574 (2003). In *Cox*, the court affirmed, on two separate

grounds, the suppression of evidence obtained by a canine sniff at a traffic stop. First, *Cox* held that the police had improperly extended "the duration of the traffic stop" in order to allow the drug-detection dog to arrive. 202 Ill.2d at 469-470, 782 N.E.2d at 280, citing *People v. Luna*, 322 Ill.App.3d 855, 859, 752 N.E.2d 477 (2001) ("An officer may not stall at the scene of a traffic stop until a drug-sniffing dog arrives and creates probable cause to conduct a search of a vehicle."). Second, putting aside the *duration* of the stop, *Cox* held that the canine sniff improperly extended the *scope* of the stop, and that a sniff may be used only if there are "'specific and articulable facts'" suggesting that drugs are in the vehicle. *Id.* at 470-471, 782 N.E.2d at 280-281.

In the present case, the majority did not find that the troopers had improperly extended the duration of the stop of respondent's vehicle. Rather, relying exclusively upon *Cox*'s second holding, the majority held that the troopers broadened the scope of the stop by employing a canine sniff, and that they had no "'specific and articulable facts' to support" use of the dog. App. 4a-5a. Accordingly, the majority concluded that "the trial court should have granted [respondent]'s motion to suppress based on the unjustified expansion of the scope of the stop." *Id.* 5a.

Joined by Justices Fitzgerald and Garman, Justice Thomas dissented. The dissent chastised the majority for ignoring *City of Indianapolis v. Edmond,* 531 U.S. 32 (2000), and *United States v. Place,* 462 U.S. 696 (1983), which both hold that a canine sniff is not a search under the Fourth Amendment. App. 7a. Given this precedent, the dissent reasoned a canine sniff does not transform the seizure of a legitimately detained vehicle into a search. *Ibid.* And because a canine sniff is not a search, the dissent concluded that "the police did not need probable cause or a reasonable suspicion of wrongdoing before conducting it." *Id.* 10a.

Justice Thomas explained that the rule of law set down by the majority — that a canine sniff must be justified by a reasonable, articulable suspicion that the vehicle contains illegal drugs — has no conceivable basis in precedent. The dissent noted that if a canine sniff is a search, it must be supported by probable cause, but if a sniff is not a search, then it does not even implicate the Fourth Amendment. *Ibid.* By holding that canine sniffs must be justified by reasonable, articulable suspicion, the majority created an untenable "middle ground," improperly extending *Terry* to searches for incriminating evidence and erroneously equating canine sniffs with *Terry* investigative stops. *Ibid.*

The dissent argued that the appellate court's judgment should have been affirmed, and concluded that the majority's contrary ruling "is wholly incompatible with United States Supreme Court case law construing the fourth amendment and is subject to reversal by that court." *Ibid.*

REASONS FOR GRANTING THE PETITION

Deepening an existing conflict among the courts, and in square conflict with this Court's precedents, the Illinois Supreme Court held that the Fourth Amendment requires police to have reasonable, articulable suspicion before using a drug-detection dog during an otherwise legitimate traffic stop. That ruling cannot be correct. Because a canine sniff does not implicate the Fourth Amendment, use of a drug-detection dog does not transform a legitimate vehicle seizure into an illegitimate vehicle search. Put another way, a Fourth Amendment non-event (here, a canine sniff) remains a Fourth Amendment non-event even if conducted during a legitimate traffic stop. And a legitimate traffic stop remains legitimate when a Fourth Amendment non-event occurs during the stop.

This Court should grant certiorari to ensure uniformity on this important and recurring question and to reverse the Illinois Supreme Court's manifestly erroneous ruling.

A. This Court Should Resolve The Deep Conflict Over Whether The Fourth Amendment Requires Reasonable, Articulable Suspicion To Justify Use Of A Drug-Detection Dog During A Legitimate Traffic Stop.

This Court has twice expressly held that a canine sniff is not a search under the Fourth Amendment. See *City of Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000); *United States v. Place*, 462 U.S. 696, 706-707 (1983). Since *Place* was decided, numerous courts have confronted whether the Fourth Amendment requires reasonable, articulable suspicion to justify a canine sniff during the course of an otherwise lawful traffic stop. Those courts have reached conflicting results.

The majority of courts have concluded that the use of a drug-sniffing dog during the course of a lawful vehicle stop does not violate the Fourth Amendment. For example, in *Wilkes v. State*, 364 Md. 554, 774 A.2d 420 (2000), Maryland's high court considered facts almost identical to those presented here. A state trooper stopped Wilkes for speeding. The trooper requested Wilkes' driver's license and registration, radioed for verification that they were valid, and requested a check for any outstanding warrants. As the trooper awaited the results, the K-9 unit arrived at the scene, and the dog alerted. The court concluded that because a canine sniff is neither a search nor a seizure, the Fourth Amendment was not implicated. *Id.* at 581, 774 A.2d at 436. Consequently, the trooper "did not need reasonable articulable suspicion of drug-related criminal activity prior to subjecting [Wilkes' vehicle] to the K-9 scan, provided the initial purpose for the stop had not been resolved." *Id.* at 581-582, 774 A.2d at 436.

Many other courts have likewise held that the Fourth Amendment does not require reasonable, articulable suspicion to conduct a canine sniff of a vehicle during a legitimate traffic stop. See, *e.g.*, *United States v. Jeffus*, 22 F.3d 554, 557 (4th Cir. 1994); *United States v. Moore*, 329 F.3d 399, 403-404 (5th Cir. 2003); *United States v. Ibarra*, 345 F.3d 711, 715 (9th Cir. 2003); *United States v. Holloman*, 113 F.3d 192, 194-196 (11th Cir. 1997); *State v. Bergmann*, 633 N.W.2d 328, 334-335 (Iowa 2001); *State v. Gama*, 112 Nev. 833, 837-838, 920 P.2d 1010, 1013-1014 (1996); *State v. England*, 19 S.W.3d 762, 766-768 (Tenn. 2000).

In clear conflict with these decisions, the Illinois Supreme Court in this case held that the Fourth Amendment requires reasonable, articulable suspicion to justify a canine search during an otherwise legitimate traffic stop. App. 1a-10a. At least one other state court of last resort and one federal court of appeals have reached the same conclusion. See *State v. Wiegand*, 645 N.W.2d 125, 134-137 (Minn. 2002); *United States v. Quinn*, 815 F.2d 153, 159 (1st Cir. 1987).

This conflict among the courts is deep, intractable, and ripe for resolution.*

---

* As noted above (p. 4, *supra*), the Illinois Supreme Court did not rest its holding upon any perceived extension of the duration of the traffic stop. That said, courts have also split on whether the Fourth Amendment requires reasonable, articulable suspicion to briefly detain a vehicle after the conclusion of a valid traffic stop in order to conduct a canine sniff. Compare *State v. Box*, 205 Ariz. 492, 73 P.3d 623, 628-629 (App. 2003) (no reasonable, articulable suspicion required to conduct a canine sniff of a vehicle where sniff resulted in brief additional detention); *United States v. $404,905.00 in U.S. Currency*, 182 F.3d 643, 648-649 (8th Cir. 1999) (same), cert. denied, 528 U.S. 1161 (2000); *United States v. Hunnicutt*, 135 F.3d 1345, 1350 (10th Cir. 1998) (same), with *United States v. Dortch*, 199 F.3d 193, 198-200 (5th Cir. 1999) (Fourth Amendment violated where

B. The Illinois Supreme Court Erred In Holding That The Fourth Amendment Requires Officers To Have Reasonable, Articulable Suspicion Before Using A Drug-Detection Dog During A Legitimate Traffic Stop.

A sniff by a drug-detection dog is uniquely unobtrusive. Because a canine sniff does not expose items that would otherwise remain hidden, information is obtained without the intrusion or discomfiture associated with a traditional search. *Place*, 462 U.S. at 707. As a result, exposing luggage located in a public place to a trained canine does not constitute a search under the Fourth Amendment. *Ibid.* Likewise, walking a drug-detection dog around the exterior of a seized vehicle does not transform the seizure into a search. *Edmond*, 531 U.S. at 40.

The Illinois Supreme Court, by requiring officers to have "specific and articulable facts" before using a canine sniff during an otherwise legitimate traffic stop, applied a Fourth Amendment analysis where no Fourth Amendment concerns are implicated. And in ruling that the use of a drug-detection dog "impermissibly broadened the scope of the traffic stop into a drug investigation" (App. 4a), the majority failed to recognize that a sniff is not a search, but instead is a Fourth Amendment non-event. As the dissent recognized, the majority doubly erred, for if a canine sniff is a search, it must be supported by probable cause, not merely reasonable suspicion. *Id.* 10a.

It is undisputed on this record that Trooper Gillette was justified in stopping respondent's vehicle for speeding. It is equally clear under this Court's precedents that a canine sniff does not implicate the Fourth Amendment. Yet the Illinois Supreme Court nonetheless concluded that a canine sniff

---

police continued to detain vehicle after legitimate traffic stop to allow use of drug-detection dog); *State v. Fields*, 662 N.W.2d 242, 246-247 (N.D. 2003) (same).

implicates the Fourth Amendment if it is conducted during a legitimate traffic stop of a vehicle flagged down for speeding. That is, the court reached the nonsensical and demonstrably incorrect conclusion that a Fourth Amendment non-event plus a legitimate traffic stop equals a Fourth Amendment violation. Because respondent's Fourth Amendment rights were not violated, this Court should grant review of and reverse the Illinois Supreme Court's contrary ruling.

C. The Question Presented Is Important And Recurring.

The question presented here recurs with great frequency. In addition to the cases cited above, see, *e.g.*, *United States v. Arreola-Delgado*, 137 F.Supp.2d 1240, 1246 (D. Kan. 2001) (no reasonable, articulable suspicion required to conduct a canine sniff of a vehicle during the course of a legitimate traffic stop); *United States v. Taylor*, 955 F. Supp. 763, 766-769 (E.D. Mich. 1997) (same); *State v. Brown*, 691 So.2d 637, 638-639 (Fla. App. 1997) (same); *Bradshaw v. State*, 759 N.E.2d 271, 273-274 (Ind. App. 2001) (same); *State v. Carlson*, 657 N.E.2d 591, 594 (Ohio App. 1995) (same).

The importance of the question presented is equally clear. As this Court recently recognized, illegal drugs present a social problem of the greatest magnitude. See *Board of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls*, 536 U.S. 822, 835-836 (2002). Although Fourth Amendment guarantees have not and should not be suspended in service of the war on drugs, see *City of Indianapolis v. Edmond*, *supra*; *Kyllo v. United States*, 533 U.S. 27 (2001), where there is no Fourth Amendment prohibition, courts should not prohibit legitimate law enforcement practices even if they are viewed by some to be distasteful. See *Florida v. Bostick*, 501 U.S. 429, 439 (1991).

Drug-detection dogs have become an effective and widely used law enforcement tool. Although this Court has twice

declared that canine sniffs do not implicate the Fourth Amendment, the lower courts remain divided over whether such sniffs may be used during the course of a lawful traffic stop. There is a pressing need for this Court's intervention to resolve the issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

LISA MADIGAN
Attorney General of Illinois
GARY FEINERMAN*
Solicitor General
LINDA D. WOLOSHIN
MARY FLEMING
Assistant Attorneys General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3698

*Counsel of Record

DECEMBER 2003

APPENDIX

Supreme Court of Illinois

Docket No. 91547 - Agenda 17 - January 2002.

Filed: November 20, 2003

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, v. ROY I. CABALLES, Appellant.

JUSTICE KILBRIDE delivered the opinion of the court:

Defendant, Roy I. Caballes, challenges the procedures used by police during a routine traffic stop. Defendant unsuccessfully attempted to suppress evidence of marijuana found in the trunk of his car after an alert by a drug-detection dog and was subsequently convicted of one count of cannabis trafficking (720 ILCS 550/5.1(a) (West 1998)). The appellate court affirmed the conviction, finding that reasonable articulable suspicion was not needed to conduct a canine sniff and that defendant was unjustifiably detained by the police for only a *de minimis* period of time. We reverse and hold that the trial court should have granted defendant's motion to suppress based on the unjustified expansion of the scope of the stop. See *People v. Cox*, 202 Ill.2d 462 (2002).

BACKGROUND

On November 12, 1998, Illinois State Police Trooper Daniel Gillette stopped defendant on Interstate Route 80 in La Salle County for driving 71 miles per hour in a zone with a posted speed limit of 65 miles per hour. Trooper Gillette radioed the police dispatcher that he was making the traffic stop. On hearing Gillette's radio transmission reporting the stop, Trooper Craig Graham of the Illinois State Police Drug Interdiction Team announced to the dispatcher he was going to meet Gillette to conduct a canine sniff. Gillette, however, did not request Graham's assistance.

Gillette approached defendant's car, informed him that he was speeding, and asked for his driver's license, vehicle registration, and proof of insurance. Defendant complied with Gillette's requests. Gillette testified that while at defendant's car he noticed an atlas on the front seat, an open ashtray, the smell of air freshener, and two suits hanging in the back seat without any other visible luggage.

Gillette then instructed defendant to reposition his car on the shoulder of the road so the two vehicles would be out of traffic and to come back to the squad car because it was raining. Defendant complied, and Gillette told defendant he was only going to write a warning ticket for speeding. Gillette then called the police dispatcher to ascertain the validity of defendant's license and to check for outstanding warrants.

While waiting for the results of the license check, Gillette asked defendant where he was going and why he was "dressed up." Defendant replied that he was moving from Las Vegas to Chicago. He was accustomed to being dressed up because he was a salesman, although he was not currently employed. Gillette testified that defendant continued to act nervous even after being told he was receiving only a warning ticket. Gillette considered defendant's continued nervousness unusual.

Dispatch informed Gillette that defendant had surrendered a valid Illinois license to Nevada, but the validity of his Nevada license was not confirmed for two more minutes. After receiving that confirmation, Gillette requested defendant's criminal history. He then asked defendant for permission to search his vehicle, and defendant refused to give consent.

Gillette next asked defendant if he had ever been arrested, and defendant responded that he had not. The dispatcher subsequently reported that defendant had two prior arrests for distribution of marijuana, and Gillette began to write the warning ticket. He was interrupted by another officer calling

him over the radio on an unrelated matter. Gillette testified he was still writing the warning ticket when Trooper Graham arrived with his drug-detection dog and began walking around defendant's car. The dog alerted at defendant's trunk in less than a minute. After Graham advised him of the alert, Gillette searched defendant's trunk and found marijuana.

Defendant was then arrested and taken to the police station, where he signed the warning ticket. He was subsequently charged with one count of cannabis trafficking (720 ILCS 550/5.1(a) (West 1998)).

Defendant filed a motion to suppress the drugs found in the trunk and to quash the arrest. The trial court denied the motion and found defendant guilty after a bench trial. Defendant was sentenced to 12 years in prison and ordered to pay a street value fine of $256,136.

Defendant appealed, and the appellate court affirmed, finding that the police did not need reasonable articulable suspicion to justify the canine sniff and that, although the criminal history check improperly extended defendant's detention, the delay was *de minimis*. No. 3-99-0932 (unpublished order under Supreme Court Rule 23). This court granted defendant's petition for leave to appeal. 177 Ill. 2d R. 315.

ANALYSIS

On appeal, defendant challenges the denial of his motion to suppress the evidence uncovered by the canine sniff. This court recently decided a similar issue in *People v. Cox*, 202 Ill. 2d 462 (2002). In that case, we applied the two-part test adopted in *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968), to determine the overall reasonableness of the stop. *Cox*, 202 Ill. 2d at 467. Although a traffic stop was not at issue in *Terry*, this court has previously applied the principles of that case to routine traffic stops. See *People v. Gonzalez*, 184 Ill. 2d

402, 421-22 (1998) (citing *Michigan v. Long*, 463 U.S. 1032, 1047-52, 77 L. Ed. 2d 1201, 1218-22, 103 S. Ct. 3469, 3480-82 (1983), and *Pennsylvania v. Mimms*, 434 U.S. 106, 111-12, 54 L. Ed. 2d 331, 337-38, 98 S. Ct. 330, 334 (1977)). Accordingly, we will also apply the *Terry* test in this case. We must consider: "(1) 'whether the officer's action was justified at its inception' and (2) 'whether it was reasonably related in scope to the circumstances which justified the interference in the first place.'" *People v. Brownlee*, 186 Ill. 2d 501, 518-19 (1999), quoting *Terry*, 392 U.S. at 19-20, 20 L. Ed. 2d at 905, 88 S. Ct. at 1879. Here, it is undisputed that the traffic stop was properly initiated. Thus, we need only examine the second part of the *Terry* test, concerning the reasonableness of the officer's conduct. The State bears the burden of establishing that the conduct remained within the scope of the stop. *Cox*, 202 Ill. 2d at 467.

In *Cox*, we concluded that evidence obtained by a canine sniff was properly suppressed because calling in a canine unit unjustifiably broadened the scope of an otherwise routine traffic stop into a drug investigation. *Cox*, 202 Ill. 2d at 469, 471. We emphasized that the sniff was impermissible without "'specific and articulable facts'" to support the stopping officer's request for the canine unit. *Cox*, 202 Ill. 2d at 470-71.

Here, as in *Cox*, the State has not offered sufficient justification for implementing a canine sniff. The police did not detect the odor of marijuana in the car or note any other evidence suggesting the presence of illegal drugs. See *Cox*, 202 Ill. 2d at 469. Although Officer Gillette did not actively summon Trooper Graham and his dog for the purpose of conducting a canine sniff, as occurred in *Cox*, the overall effect remains the same. As in *Cox*, the police impermissibly broadened the scope of the traffic stop in this case into a drug investigation because there were no specific and articulable

facts to support the use of a canine sniff. See *Cox*, 202 Ill. 2d at 469.

Moreover, the observations made by Officer Gillette during the stop that (1) defendant said he was moving to Chicago, but the only visible belongings were two sport coats in the backseat of the car, (2) the car smelled of air freshener, (3) defendant was dressed for business while traveling cross-country, even though he was unemployed, and (4) defendant seemed nervous were insufficient to support a canine sniff. The lack of visible luggage in the interior of the car may be readily explained, since any personal items being transported could have been stored in the trunk or shipped separately. While air fresheners may be used to mask the odor of contraband, air fresheners are also used in cars to mask other odors such as cigarette smoke. As for defendant's choice of travel attire, we fail to see how his stated preference for business clothing suggests any involvement in past or present criminal activity. Also, the general allegation that defendant appeared nervous, without more, cannot serve as a reasonable basis for further detaining defendant. See *People v. Ortiz*, 196 Ill. 2d 236, 266-67 (2001).

Finally, even when these factors are viewed together, they constitute nothing more than a vague hunch that defendant may have been involved in possible wrongdoing. Accordingly, we hold that the trial court should have granted defendant's motion to suppress based on the unjustified expansion of the scope of the stop.

CONCLUSION

Here, as in *Cox*, 202 Ill. 2d at 470-71, a canine sniff was performed without " 'specific and articulable facts' " to support its use, unjustifiably enlarging the scope of a routine traffic stop into a drug investigation. Under these circumstances, the trial court should have granted defendant's motion to suppress the evidence obtained after the police dog's alert.

The judgments of the appellate court and the trial court are reversed.

Judgments reversed.

JUSTICE THOMAS, dissenting:

With today's decision, the *dicta* in *People v. Cox*, 202 Ill. 2d 462 (2002), becomes the law. Because I strongly disagreed with the *Cox dicta*, I dissent from the majority opinion.

In *Cox*, this court upheld a suppression order on the basis that the defendant had suffered an illegal detention. *Cox*, 202 Ill. 2d at 469-70. After so concluding, the court tacked on a gratuitous section that concluded that the police may not conduct a canine sniff of a vehicle unless they have a reasonable, articulable suspicion that the car's occupants are possessing a controlled substance. *Cox*, 202 Ill. 2d at 470-71. According to the *Cox* majority, *Terry* principles govern whether the police may conduct a canine sniff of a lawfully detained vehicle. *Cox*, 202 Ill. 2d at 466-68.

As I explained in my dissent, the section of the majority opinion dealing with the canine sniff was *dicta* because the majority had already concluded that the evidence had to be suppressed because the defendant was subjected to an illegal detention. See *Cox*, 202 Ill. 2d at 478 (Thomas, J., dissenting, joined by Fitzgerald and Garman, JJ.); see also *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 470 (1997) (generally, this court will not "engage in speculative analysis or *** render an advisory opinion *** where, as in the instant case, such analysis or opinion is not necessary for the disposition of the cause"). In the case before us, the *Cox dicta* supplies the sole support for the majority's holding, and thus the *dicta* is now the law.

Typically, having once voiced disagreement with an opinion, a justice will follow the opinion in future cases because of *stare decisis* considerations. I cannot do that with *Cox* because that case is wholly incompatible with United States Supreme Court cases construing the fourth amendment. This court is obligated to follow decisions of the United States Supreme Court on questions of federal constitutional law, and I cannot join an opinion that fails to do so.

As I explained in *Cox*, under the Supreme Court cases, a canine sniff is not a search. See *City of Indianapolis v. Edmond*, 531 U.S. 32, 148 L. Ed. 2d 333, 121 S. Ct. 447 (2000); *United States v. Place*, 462 U.S. 696, 77 L. Ed. 2d 110, 103 S.Ct. 2637 (1983). In *Cox*, the majority refused to acknowledge that a canine sniff is not a search and failed to discuss *City of Indianapolis* or *Place*. If a sniff is not a search, then the police do not need probable cause to conduct one. Further, allowing a canine to sniff a vehicle that is already detained does not transform the seizure into a fourth amendment search. The Supreme Court made this plain in *City of Indianapolis*:

> "It is well established that a vehicle stop at a highway checkpoint effectuates a seizure within the meaning of the Fourth Amendment. [Citation.] The fact that officers walk a narcotics-detection dog around the exterior of each car at the Indianapolis checkpoints does not transform the seizure into a search. [Citation.] Just as in *Place*, an exterior sniff of an automobile does not require entry into the car and is not designed to disclose any information other than the presence or absence or narcotics. [Citation.] Like the dog sniff in *Place*, a sniff by a dog that simply walks around a car is 'much less intrusive than a typical search.' [Citation]" *City of Indianapolis*, 531 U.S. at 40, 148 L. Ed. 2d at 342-43, 121 S.Ct. at 453.

After ignoring the cases holding that canine sniffs are not searches, the *Cox* majority held that sniffs were controlled by *Terry* principles, even though the Supreme Court has made it clear that *Terry* applies only to searches for weapons. It has never been extended to general searches for incriminating evidence. As I explained in *Cox*:

> "I also disagree with the appellate court's holding (and the majority's apparent implied holding) that canine sniffs should be considered limited investigatory stops governed by *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968). *Terry* allows the police to briefly detain an individual when the officer 'observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot.' *Terry*, 392 U.S. at 30, 20 L. Ed. 2d at 911, 88 S. Ct. at 1884. Additionally, the officer is allowed, without a warrant, to conduct a careful limited search of the person when his observations reasonably lead him to believe that the person might be carrying a weapon. The purpose of the 'frisk' is to allow the police, for their own safety and the safety of others, to determine if the person is *armed*. *Terry*, 392 U.S. at 27, 20 L. Ed. 2d at 909, 88 S. Ct. at 1883. The Court reached its decision by balancing the need to search against the invasion the search entails. *Terry*, 392 U.S. at 21, 20 L. Ed. 2d at 905-06, 88 S. Ct. at 1879-80, quoting *Camara v. Municipal Court*, 387 U.S. 523, 536-37, 18 L. Ed. 2d 930, 940, 87 S. Ct. 1727, 1735 (1967). As Professor LaFave has noted, however, 'there is no search-for-evidence counterpart to the *Terry* weapons search, permissible on only a reasonable suspicion that such evidence would be found.' 4 W. LaFave, *Search & Seizure* §9.5(g), at 300 (3d ed. 1996). See also *Minnesota v. Dickerson*, 508 U.S. 366, 373, 124 L. Ed. 2d 334, 344, 113 S. Ct. 2130, 2136 (1993)

(sole justification for a *Terry* frisk is the protection of the police officer and others, not to gather evidence); *People v. Flowers*, 179 Ill. 2d 257, 263 (1997) (same); *Arizona v. Hicks*, 480 U.S. 321, 328-29, 94 L. Ed. 2d 347, 356, 107 S. Ct. 1149, 1154 (1987) (refusing to recognize an intermediate type of search between a plain-view inspection and a 'full-blown search' that would merely require a reasonable suspicion); *Ybarra v. Illinois*, 444 U.S. 85, 93-94, 62 L. Ed. 2d 238, 247, 100 S. Ct. 338, 343 (1979) (*Terry* cannot be understood to allow any search whatever for anything but weapons); *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 619, 103 L. Ed. 2d 639, 661, 109 S. Ct. 1402, 1414 (1989) (balancing test is appropriate only when warranted by special needs beyond the normal need for law enforcement). Thus, the majority's apparent belief that a canine sniff for narcotics is a search that can be conducted on an officer's mere reasonable suspicion impermissibly extends *Terry* to general searches for evidence." *Cox*, 202 Ill. 2d at 487-88 (Thomas, J., dissenting, joined by Fitzgerald and Garman, JJ.).

The majority's opinion is wholly invalid on this ground because the Supreme Court requires *probable cause* for warrantless searches of vehicles. See, *e.g.*, *Wyoming v. Houghton*, 526 U.S. 295, 300, 143 L. Ed. 2d 408, 414-15, 119 S. Ct. 1297, 1300 (1999). If a sniff is a search, then the police cannot conduct one in the absence of probable cause. Thus, in trying to restrict the authority of the *police* in a routine traffic stop, the majority has unwittingly restricted a *defendant's* fourth amendment rights by applying *Terry* to what the majority believes to be a search for incriminating evidence.

In another passage that bears repeating, I pointed out the majority's dilemma:

"In sum, the answer to the question of whether a canine sniff is a search leads to two possible outcomes. If a sniff is a search, then the police need probable cause to conduct one. If a sniff is not a search, then neither the fourth amendment nor article I, section 6, of the Illinois Constitution is implicated. There simply cannot be a 'reasonable suspicion' middle ground because the United States Supreme Court has not expanded *Terry* to general searches for incriminating evidence, as opposed to searches for weapons.

The majority thus refuses to answer the threshold question, because an answer cannot lead to its result. Instead, the majority has issued a policy decision with no foundation in the law." *Cox*, 202 Ill. 2d at 489 (Thomas, J., dissenting, joined by Fitzgerald and Garman, JJ.).

In the case before us, the majority has not held that defendant's vehicle was subjected to an illegal detention. Therefore, because the police did not impermissibly extend the traffic stop to allow the canine to sniff defendant's car, defendant's fourth amendment rights were not violated. The canine sniff was not a search, and thus the police did not need probable cause or a reasonable suspicion of wrongdoing before conducting it.

As with *Cox*, this decision is wholly incompatible with United States Supreme Court case law construing the fourth amendment and is subject to reversal by that court. Accordingly, I cannot join in this opinion, or in any other one that follows and applies the *Cox* rule.

JUSTICES FITZGERALD and GARMAN join in this dissent.

No. 3--99–0932

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2001

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the
	)	13th Judicial Circuit,
Plaintiff-Appellee,	)	La Salle County, Illinois
	)	
v.	)	No. 98-CF-447
	)	
ROY I. CABALLES,	)	Honorable
	)	H. Chris Ryan, Jr.,
Defendant-Appellant.	)	Judge Presiding

MODIFIED UPON DENIAL OF REHEARING
ORDER "Not To Be Published"

The defendant, Roy I. Caballes, was indicted for the offense of cannabis trafficking in violation of section 5.1(a) of the Cannabis Control Act. 720 ILCS 550/5.1(a) (West 1998). Defendant filed a motion to suppress evidence, asserting that he was illegally detained. The trial judge denied the motion and the defendant was convicted after a bench trial. The defendant appeals. We affirm.

FACTS

On November 12, 1998, at approximately 5:00 p.m., the defendant was traveling eastbound on Interstate Route 80 in a 1998 Grand Marquis. At the hearing on the motion to suppress, the defendant testified that he passed a white Crown Victoria he estimated was traveling at 60 miles per hour. Illinois State Police trooper Daniel Gillette was driving the Crown Victoria and testified that he was driving at 65 miles per hour, clocked the defendant at 71 miles per hour and effected a traffic stop at 5:06 p.m.

Gillette called the dispatcher at 5:06:42 to check the defendant's license plates. A second state trooper, Craig Graham, heard the call over the radio and immediately started for the scene with his drug-sniffing dog, Krott. Gillette testified that he did not call for Graham because it was Graham's "responsibility as part of the team" to "show up."

Meanwhile, Gillette approached the defendant in his car. Gillette informed the defendant that he was speeding and asked him for his license, vehicle registration and proof of insurance. At the hearing on the motion to suppress, Gillette testified that he saw an atlas on the front seat, the ashtray was open, the car smelled like air freshener, the defendant was dressed up and the only visible luggage was a couple of suits hanging in the back seat. Gillette then told the defendant to pull a little further onto the shoulder, then to come back to the squad car.

After both the defendant and Gillette moved their vehicles, the defendant got into the squad car where Gillette informed him that he was only going to issue a warning ticket. Gillette called the radio dispatcher to check that the defendant's license was valid and whether the defendant had any outstanding warrants. While waiting for the results of the license check, Gillette questioned the defendant about his destination and his attire. The defendant told Gillette that he was moving from Las

Vegas to Chicago because his girlfriend had left him; he was dressed up because he was a salesman and was used to being dressed up although he was not currently employed. Gillette testified that the defendant "acted nervous" and usually people do not act nervous after they are told that they will receive only a warning.

At 5:11:58, the radio dispatcher informed Gillette that the defendant had a valid Nevada license and he had no outstanding warrants. Gillette then asked the dispatcher for a criminal history. While Gillette waited for the results of the criminal history, he asked the defendant for permission to search his vehicle. The defendant refused. When Gillette then asked if the defendant had ever been arrested, the defendant responded that he had not.

Radio dispatch notified Gillette at 5:12:42 that the defendant had two prior arrests for narcotic violations. Gillette then began to write the warning ticket. The exact time that Graham arrived is unclear from the record. Though Gillette testified that he did not know the exact time that Graham arrived, he was writing the warning ticket when he noticed Graham parked behind him. Gillette told Graham that he was writing the warning ticket and Graham should walk his dog around the defendant's car.

Less then one minute later, Graham advised Gillette that the dog alerted at the trunk of the defendant's car. Gillette had not completed writing the warning ticket at this time. Gillette searched the defendant's trunk and found marijuana. At 5:15, Gillette changed the activity code of the stop to a narcotics detention. Gillette seized the narcotics, arrested the defendant and took the defendant to the police station where he had the defendant sign the warning ticket.

The defendant was charged with one count of cannabis trafficking. Defendant filed a motion to suppress the evidence

seized and quash the arrest. At the hearing to suppress the evidence, the trial court denied the motion, finding that the traffic stop and the detention to write the warning ticket were proper and there was no unreasonable delay. After a stipulated bench trial, the defendant was found guilty of cannabis trafficking, sentenced to 12 years incarceration and assessed a street value fine of $256,136.

DISCUSSION

The defendant argues that the motion to suppress should have been granted because (1) Gillette prolonged the stop past what was required to complete the "business portion" of the stop by requesting the defendant's criminal history; (2) Gillette issued a written warning when a verbal warning was within his discretion; and (3) Gillette did not have probable cause to search his vehicle after the dog alert because dog alerts are unreliable.

When ruling on a motion to suppress, it is the function of the trial judge to determine the credibility of the witnesses and to resolve any conflict in their testimony. People v. Koutsakis, 272 Ill. App. 3d 159, 649 N.E.2d 605 (1995). A trial court's determination on a motion to suppress is therefore entitled to great deference. Koutsakis, 272 Ill. App. 3d 159, 649 N.E.2d 605. Accordingly, the trial court's decision on a motion to suppress will not be reversed unless it is manifestly erroneous. People v. Kidd, 175 Ill.2d 1, 675 N.E.2d 910 (1996). However, the trial court's determination of reasonable suspicion to stop a vehicle and probable cause to conduct a search is subject to de novo review. Kidd, 175 Ill.2d 1, 675 N.E.2d 910.

I.

Stopping a vehicle for a traffic violation does not justify a search of the person or the vehicle. People v. Evans, 259 Ill. App. 3d 650, 631 N.E.2d 872 (1994). Prior to a dog's alert,

there is no basis for a search of a vehicle. Koutsakis, 272 Ill. App. 3d 159, 649 N.E.2d 605. If a defendant is not lawfully detained at the time of the alert, the search was unlawful. Koutsakis, 272 Ill. App. 3d 159, 649 N.E.2D 605.

When a police officer stops a vehicle for a minor traffic violation, the officer may briefly detain the driver to request a valid driver's license and, under certain circumstances, conduct a speedy warrant check. Koutsakis, 272 Ill. App. 3d 159, 649 N.E.2d 605. Where the officer's suspicion is aroused during the initial inquiries, further detention may be warranted. People v. Easley, 288 Ill. App. 3d 487, 491, 680 N.E.2d 776, 779 (1997). When deciding whether reasonable suspicion exists to justify the detention, a court must consider the totality of the circumstances. Easley, 288 Ill. App. 3d at 491, 680 N.E.2d at 779. Even if there is an innocent explanation for each individual factor considered separately, the factors viewed in combination may constitute enough reasonable suspicion to warrant further detention. United States v. Finke, 85 F.3d 1275, 1280 (7th Cir. 1996).

A.

The defendant argues that trooper Gillette was limited to the inquiries required to issue a warning. Those inquiries are a valid license check and an outstanding warrant check. He contends that Gillette did not have a reasonable articulable suspicion of criminal activity to request the criminal history.

The State asserts that Gillette had a reasonable articulable suspicion because 1) defendant said he was moving to Chicago, 2) there was an atlas on the front seat, 3) the vehicle smelled like air freshener, 4) the defendant was dressed up and said he was accustomed to dressing up for work though he was currently unemployed, 5) defendant had no luggage in the interior of the car, other than two hanging suits, and 6) defen-

dant continued to act nervous after Gillette informed him that he would only receive a warning.

These facts, however, amount to a series of hunches or speculations that do not support a reasonable articulable suspicion that the defendant had committed or was about to commit a crime. See People v. Ruffin, 315 Ill. App. 3d 744, 751, 734 N.E.2d 507, 512 (2000). Mere hunches or unparticularized suspicion are not enough to establish reasonable articulable suspicion. People v. Stewart, 242 Ill. App. 3d 599, 606, 610 N.E.2d 197, 202 (1993). Without a reasonable articulable suspicion, Gillette was not justified in detaining the defendant for the purpose of running a check of the defendant's criminal history. See Easley, 288 Ill. App. 3d at 491-92, 680 N.E.2d at 779.

B.

Defendant asserts that even if there was a reasonable articulable suspicion to request his history, Gillette did not need a criminal history to write the defendant a warning; rather, he used the criminal history request as a stalling tactic to give Graham an additional three minutes to arrive with the dog. Therefore, the extended detention was unreasonable.

The brevity of the stop is an important factor in determining whether the stop was reasonable. Koutsakis, 272 Ill. App. 3d at 164, 649 N.E.2d at 609. However, there "is no talismatic (sic) time beyond which a traffic stop * * * becomes an unreasonable seizure." Koutsakis, 272 Ill. App. 3d at 164, 649 N.E.2d at 609. When deciding whether a detention was reasonable, the totality of the circumstances must be considered. See Easley, 288 Ill. App. 3d at 492, 680 N.E.2d at 779.

On direct examination, Gillette testified that a criminal history check took less than one minute. On cross examination, however, a question was raised concerning the length of delay

caused by the request of the defendant's criminal history. However, the radio dispatch transcript reveals that Gillette's testimony on direct is accurate and Gillette received the defendant's criminal history 44 seconds after dispatch informed him that defendant had a valid Nevada license.[1]

Viewing the totality of the circumstances, we find the 44 second delay to be *de minimus*. From the beginning of the stop to the moment when Gillette changed the code to a narcotics detention was less than nine minutes. It was six minutes into the stop before radio dispatch was able to confirm that the defendant's Nevada driver's license was valid. Gillette then requested the criminal history and started the write the ticket. Graham arrived, walked the dog and told Gillette that the dog had alerted. Gillette then searched the defendant's car, found contraband, and changed the stop code to a narcotics arrest. The trial judge found that "[n]ine minutes to stop to narcotics arrest" was not "an unreasonable delay." We would add that 44 seconds to check the defendant's history was not an unreasonable delay under the totality of the circumstances. Based on this sequence of events, we cannot say that the trial judge's decision was manifestly erroneous.

II.

The defendant next contends that Gillette was required to issue a verbal warning, not a written warning, to keep the intrusion as minimal as possible. He says that because Gillette

---

[1] The radio dispatch transcript of the stop shows the following time line: 1. At 17:09:02, Gillette gave defendant's name to radio dispatch to run the ID checks. 2. At 17:09:58, the dispatch tells Gillette that a valid Illinois license had been rendered to Nevada. 3. At 17:11:58, defendant's driver's license in Nevada came back valid. Gillette then immediately requested defendant's criminal history. 4. At 17:12:42, dispatch reported defendant's criminal history.

could have issued a verbal warning, the written warning was merely a ruse to stall for more time to allow Graham to arrive with the dog. Therefore, the extended detention was unreasonable.

It is a long-accepted practice that an officer may issue a written warning. Koutsakis, 272 Ill. App. 3d at 164, 649 N.E.2d at 609; See also People v. Perez, 288 Ill. App. 3d 1037, 681 N.E.2d 173 (1997); People v. Sesmas, 227 Ill. App. 3d 1040, 591 N.E.2d 918 (1992). The defendant cites no authority, nor did we uncover any, which requires an officer to issue a verbal warning instead of a written warning. Furthermore, Gillette testified that information from a written warning is entered into the TIPS tracking system, allowing a trooper to check whether an individual has received a warning for a traffic violation within the last twelve months. We reject the defendant's argument that Gillette was required to issue a verbal warning as the least intrusive detention.

III.

The defendant also argues that the dog alert was unreliable because it was not trained in associative odors. Therefore, Gillette did not have probable cause to search the defendant's car.

It is widely accepted that an alert by a trained dog provides probable cause for a search.[2] Easley, 288 Ill. App. 3d at 492,

---

[2] Defendant asserts that the recent Fifth District case of People v. Cox, 318 Ill. App. 3d 161, 739 N.E.2d 1066 (2000), is controlling and requires a canine sniff to be supported by reasonable suspicion of criminal activity. We reject Cox. If a canine unit arrives and performs a sniff prior to the conclusion of a traffic stop, reasonable suspicion is not required. Illinois law requires that an officer must have a reasonable articulable suspicion to detain a person beyond the conclusion of a valid traffic stop for the purpose of conducting a canine sniff. See Easley, 288 Ill. App. 3d 487, 680 N.E.2d 776, Koutsakis, 272 Ill. App. 3d 159, 649 N.E.2d 605. If a defendant is lawfully detained at the time of a canine alert, the officer has probable cause to search. See Koutsakis, 272 Ill. App. 3d at 163, 649 N.E.2d at 608.

680 N.E.2d at 780, Koutsakis, 272 Ill. App. 3d at 163, 649 N.E.2d at 608, Finke, 85 F.3d at 1282. The court assessed the credibility of the expert testimony concerning the dog's training and certification and found that the dog's training was reliable. The search was proper because it was based upon probable cause provided by a reliable dog alert. The court's decision was not manifestly erroneous.

CONCLUSION

The judgment of the circuit court of La Salle County is affirmed.

Affirmed.

LYTTON, J., with HOMER, P.J., and SLATER, J., concurring.

[ENTERED: April 9, 2001]

IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT, LASALLE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
	)	No. 98-CF-447
v.	)	
ROY I. CABALLES,	)	Honorable H. Chris Ryan, Jr.,
Defendant.	)	Judge Presiding.

Excerpt from Transcript of Proceedings, August 26, 1999

* * *

THE COURT: All right. Gentleman, I've read through the tran -- my notes I've taken with regard to the hearing on the Motion to Quash the Arrest and Suppress Evidence. I've gone through every one of your exhibits that you presented to me. This is the radio logs and the officers' individual code logs of the radio transmissions, that of Officer Graham and of Officer Gillette. All right.

Now, and I've also read the decision Brownlee which the defense has argued.

Let me start out by saying this is a motion, as I indicated, to quash arrest and suppress evidence. The burden is on the defendant to show that Fourth Amendment rights were violated of this particular defendant. First, let me start by stating there

was a stipulation presented into evidence by the parties that the times were accurate on the radio code sheets and the radio logs and the, I guess you would say, the translation of the communication between dispatch and the individual officers.

Given that stipulation, the times are accurate, I do notice, gentlemen, that there are some times which conflict, that I will state, between the actual officers' log and the actual transcription of the communication between dispatch and the officers and between the officers and themselves. And I notice on the radio sheet that time -- it states times but I don't see where there is much of a conflict because there are kind of times on their own as far as when stuff has been presented.

Suffice it to say that after you're done reading everything, it's certainly clear that Officer Gillette started the radio transmissions at 17:06 and at 5:15 they went into a narcotic arrest. That's nine minutes from the first transmission by Officer Gillette until the code change and that's by -- I don't care whose log you're going to use or officers' codes or transcriptions.

I'll then move on to let's start from the very beginning of the stop. The question becomes whether or not this gentleman was speeding. Did the officer have a valid reason to stop? We all know pretext stops by the laws in the state of Illinois are right. I don't know whether or not there was a pretext because no evidence was presented to that extent. It was merely a traffic stop. Officer Gillette said he was speeding. The State by stipulation brought in Officer Heinrich who had a subsequent conversation. The defendant made some statement to that extent. The defendant denies these statements. And so, therefore, I have two officers, one who is in court I can judge by live testimony and the other one by stipulation that said the defendant had made some reference I can't believe I was stopped for only doing -- for doing 70 in a 65.

From that particular circumstance and balancing it, gentlemen, I'm going to find that there was a valid basis for the stop. I have no reason to disprove it, disbelieve it. That would cause me to believe that several officers were in cahoots on this as opposed to a one-on-one test of credibility. I find by the number of officers that say it occurred, that I find that a valid traffic stop did occur for the offense of speeding.

There was some question of impeachment with regard to rain or no rain. I do not find that to be very persuasive. It's interesting but I do not find it to be such persuasive value that it would cause me to believe that the officer was fabricating this particular stop. Heavy rain, light rain, suffice it to say it was raining that day, gentlemen. I don't find that conflict in the evidence to be so overwhelming that it's going to cause me to find Officer Gillette was less than truthful on the basis for the stop. I find there's a valid traffic stop.

Summing up, it appears that Officer Gillette approached the vehicle, asked for the license registration, insurance to which he is entitled to do. Following the finding of the court there was a valid stop, he's entitled to do so. He asked the defendant to return to the car. He didn't allow the defendant to stay in the car. He asked him to go with him. Was that a command, gentlemen? I don't know. All I have he asked him and the defendant complied. Now, the law is very clear. An officer has a right to run a valid or a license registration on an individual that they have stopped once they have a proper stop. He has the right to run that information.

In this particular circumstance there seems to be some conflict as to whether or not the officer at the scene, at the initial stop said I'm going to give you a warning ticket. For purposes of argument, gentlemen, had he said it there or in the squad and the officer said he wasn't sure where he said it but he did tell him he was going to give him a warning ticket. For purposes of argument, gentlemen, I don't think that makes any

difference. If you tell somebody you're going to give them a warning ticket, at that point whether it was by the car, you still have the right to run the wants and warrants and whether or not the individual has a valid license.

For further purpose of argument, I'm sure that if this gentleman came back revoked, I bet he wouldn't have gotten a warning ticket. He would have gotten a citation then. But I don't find that for purposes of whether or not the stop should have stopped right there, whether it was over and through, I don't find that persuasive. The officer had the right to run that test. Run the background test.

Brownlee even seems to let that go. In that particular circumstance the officers did ask for registration identification of everybody in the car. Went back and ran it and decided that they were going to let them go. Returned to the vehicle, handed back the driver's license identification to the individuals and waited a few minutes and then asked for a consent. The supreme court indicated that once they handed back the license, that was it. The stop was through. It was completed. And the few minute delay was in violation. It was too long.

I don't have that fact pattern here, gentlemen. The officer was running the history of this particular defendant and during the course of that run from nine minutes from the start to the code of active of narcotic arrest, he was going through a process of checking the criminal history. Now, it started 5:06, all right. From what I can gather it looks to me like that about 5:12 from dispatch the criminal history came back. Now, does he have a right to ask for a criminal history? Probably not. But you read through these transmissions, gentlemen, or the radio between dispatch and Officer Gillette, it looks like he asked for a lot over a very short period of time. He started 5:06. He started to get some responses back at about 5:09. And at 5:09 it appears that he -- at 5:12 a criminal history was brought back. That, gentlemen, is approximately six minutes.

Now, he's writing out a warning ticket. It doesn't take you that long to write out a warning ticket. It takes probably at the most a minute. But was he writing during that entire time? I don't know. I don't know. I'm sure he was writing it but I don't know whether or not he started writing it after he got the criminal history or was he writing it before. I'm not sure. But it's not a departmental policy to write a warning ticket. I agree. That seems to be the evidence. That's an individual officer preference it appears. Officer Gillette, in this particular circumstance, exercised his discretion and wrote an individual warning ticket, a written one. He could have just as easily given an oral one. I believe that he testified he has done so in the past but at this time he chose to give a written and during that period of time, Officer Graham arrived about 5:13, according to the radio transmission dispatch. It looks to me like he showed up, walked and two minutes later they're into a narcotics arrest.

Brownlee, gentlemen, let me first -- Brownlee I don't find controlling here. I don't find it controlling. I find it to the point of the return of the license, Brownlee court seems to say once you gave that license back, that was it. This wasn't a circumstance where they actually gave any licenses back. He was still holding on the license from 5:06 to approximately 5:15 or 5:13 when Officer Graham apparently made some indication that a stop had occurred that Krott, the dog, had hit.

In the Brownlee decision the officers are free to request permission to search. They can do so. Officer Gillette asked. It was refused. The problem in the Brownlee was the officers requested permission to search the car after they had already returned it. We don't have that here so I don't find Brownlee controlling. It was still in a situation where it was a stop. If Officer Graham had given him the individual license and returned it and says, okay, the stop is over, you're free to go and, by the way, can I ask you to search your car. Brownlee

would certainly then start to become extremely controlling, I would think.

Now, if there's going to be an argument made on later on in the years, gentlemen, as far as, well, here comes the delay, we're trying to get around Brownlee by never handing his licenses back to him. Well, that becomes an unreasonable delay also. Nine minutes to stop to narcotics arrest or narcotics switch, I don't see as being an unreasonable delay. I don't find that time frame to be unreasonable for an officer to do even though it probably only took him a minute to write that warning ticket. Running the history of the individual defendants, running through the background, looking at his license and seeing whether or not he had any wants or warrants. By the own radio transmission of dispatch from 5:06 Officer Gillette didn't start to get that back until about 5:09, 5:10 is when he starts to get some responses back. So he even had to wait a little bit. So if you went to 5:10 up until 5:15, now, Gillette had to get out of the car somewhere and open that trunk and look in there so maybe it's 5:14. Maybe it only took a minute to walk to the car to the trunk and look. So we've got four minutes from the time that it came back for him to write it and walk around.

Now, Graham showed up at 5:13. So there's two minutes or three minutes we're starting to get into as far as taking Officer Gillette to write out the warning ticket. A lot of the holes are left open in this case, gentlemen. I don't know and I'm not going to assume the facts. I'm just saying here are some areas that are open. I find they had a valid reason to stop. I don't find the Brownlee decision to be controlling here as far as a pretextual delay of any excess amount.

Move on to the third question, gentlemen, is the reliability of this particular dog and Officer Graham. I have a Mr. Craig who testified, who is a consultant in animal behavior, that in his opinion after reading everything that was provided to him, that

Officer Graham and Krott were not properly trained in his opinion. Gentlemen, I don't look at Krott as a confidential informant. Krott doesn't run around with the type of people that you usually want to test confidential informants. I don't think he hangs out with people who use drugs or commit illegal crimes. I think he hangs around -- I would look at Krott more as a fellow officer or as a neutral citizen. He has no motive to lie as a neutral citizen. As a fellow officer, his training is important also.

Graham and Krott might not have been trained at a level that Mr. Craig thinks they should be but I'm left with Officer Graham's testimony that in the past Krott and Mr. Graham have had an experience and they've proved to be reliable in the past and found controlled substances. I'm sure nobody is infallible. I don't even think a police officer is infallible and I'm sure that dog is not infallible. The dog has no basis to falsify. It may have gotten false hits. It may not have had its desensitization training in odor elimination but Mr. Graham (sic) does not convince me to such a degree that I would say that dog is unreliable. I cannot find by the defendant's case that Mr. Graham (sic) is going to convince me that dog is unreliable. Its training may be less than what certain fields or agencies may require or would want to see but it has been trained. It has to go through recertification. The department of the state police. It has capabilities in the past of showing that it has found controlled substances. I think the dog is sufficient and reliable. That Officer Graham could reply upon the dog's actions and conduct and that Officer Gillette could rely upon Officer Graham as a fellow officer engaged in a common investigation to determine the probable cause existed to search that trunk.

So therefore, gentlemen, for those reasons I'm going to find that the Motion to Quash the Arrest and Suppress the Evidence is to be denied. The defendant has failed to put forth enough evidence to show that the Fourth Amendment rights of the

defendant were violated in the circumstances. There is your record, gentlemen. You can take it up.

With that ruling in place, gentlemen, when would you like to set this back on the trial call?

* * *